**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI**
**and**
**THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

**WRIT PETITION No. 11389 of 2007**

**O R D E R**: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a writ of Certiorari calling for the records relating to the order dated 23.2.2007 passed in O.A. No. 313 of 2006 on the file of Central Administrative Tribunal, Hyderabad Bench and to quash the same as illegal and arbitrary.

The respondent herein, who is a Postal Assistant, filed O.A. No. 313 of 2006 before the Central Administrative Tribunal challenging the order dated 25.2.2005 passed by the respondents directing recovery of an amount of Rs.65,988/- from the respondent at the rate of Rs.1,850/- per month for 35 months and Rs.1,238/- for 36$^{th}$ month. The allegation against the respondent was that she was negligent in not scrutinizing the daily accounts and had she been diligent enough and brought to the notice of the superiors about the alleged fictitious liabilities shown in the accounts it would not have been possible for the Sub Post Master to commit such frauds continuously for a period of one and half years. The contention of the respondent is that there was no negligence at all on her part and she was in no way responsible for the alleged fraud committed by the Sub Post Master and therefore no amount can be recovered from her. It is also the contention of the respondent that no inquiry has been conducted and that the department straightaway imposed penalty of recovery without making any inquiry to find out whether there was any negligence on the part of the respondent - applicant and if so, whether

it resulted in the loss of the department.

The petitioners herein filed counter before the Tribunal stating that the applicant failed to scrutinize the SO daily account of HCL PO to take notice of enormous retention of heavy cash and failed to verity the genuineness of the liabilities furnished for retention of excess cash and ensure submission of ECB memos by the Sub Post Master and that her failure to above checks resulted in commission/continuation of frauds to the tune of Rs.5,24,500/- by Sri S.R.H. Naqvi, the then SPM, HCL SO. It was further stated that due to her contributory negligence she was awarded punishment of recovery of Rs.68,988/- at the rate of Rs.1,850/- per month for 35 months and Rs.1,238/- as last instalment commencing from the salary of February, 2005.

Having heard the learned counsel for the parties and perusing the material available on record, the Tribunal allowed the O.A. filed by the respondent herein holding that without conducting inquiry the department cannot unilaterally come to the conclusion that there was negligence or breach of the order on the part of the employee and decide to recover the amount alleged to have been misappropriated by somebody else and not the employee concerned. Aggrieved by the same, the present writ petition is filed.

Heard Sri A. Rajashekar Reddy, Assistant Solicitor General of India appearing for the petitioners, and perused the material available on record.

It is an admitted fact that no inquiry has been conducted to determine whether there was any negligence or contributory negligence on the part of the respondent – applicant. It is also not the case of the petitioners that there is collusion between the respondent and Sri S.R.H. Naqvi, Sub Post Master. Though it is

contended that no inquiry need be conducted as the punishment was a minor penalty, this Court is not in agreement with the said contention. While issuing the Memo dated 16.7.2004, the respondent – applicant was asked to make representation and that if she fails to submit representation within 10 days of the receipt of the memo it would be presumed that she has no representation to make. After service of such memo the respondent – applicant submitted her explanation on 19.8.2004 denying the allegations and she did not admit her negligence or contributory negligence. As rightly pointed out by the Tribunal, after the applicant submitted the explanation the respondents – petitioners herein passed the order of punishment stating that the respondent – applicant has not put-forth any extenuating circumstances. No inquiry is conducted to determine whether there was any negligence on the part of the applicant, particularly in view of the fact that the respondent – applicant categorically denied the said allegation. The Tribunal is right in holding that without determining the alleged negligence after due inquiry no amount can be recovered from the employee who denied negligence on her part, more so when it is not the case of the respondents that the respondent – applicant utilized the amount or colluded with the Sub Post Master and misappropriated the amounts. Having heard the learned Assistant Solicitor General and perusing the material available on record, we are of the considered view that there is no material placed before this Court or before the Tribunal that a proper inquiry has been conducted for arriving at the fact as to whether there was any pecuniary loss caused to the Government by the act of the respondent – applicant and in the absence of any such inquiry the respondent – applicant cannot be made liable for the contributory negligence.

Having regard to the facts and circumstances, we find

no illegality or irregularity in the order passed by the Tribunal warranting interference by this Court. There is no merit in the writ petition. It is accordingly dismissed.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 05-06-2007.

MVB.